39TH ISSUE

OCTOBER 25TH - OCTOBER 31ST

GST	CENTRAL EXCISE
SERVICE TAX	CUSTOMS
	STATE TAXES

TAX CONNECT

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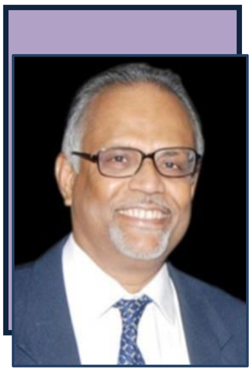
EDITORIAL



Friends,

We would bring to your attention few important judgments as follows -

In Customs, The Hon'ble Delhi High Court in the matter of Principal Commissioner of Custom Versus Riso India Pvt. Ltd., has granted **interest on refund of SAD since refund was granted beyond 3 months**. It has held that the department was not justified in denying interest u/s 27A. Many assesses have faced such a situation regarding delay in processing their SAD refund claims. They may please make a note of this judgment.

In Service Tax, The Hon'ble Sikkim High Court again upheld its judgement in **Future Gaming 2014 and Future Gaming 2015 - [2015 (10) TMI 1114 - SIKKIM HIGH COURT**]. It has held that Buying & selling Lottery Tickets is not rendering service to the State and hence not liable to service tax. Rule 6(7C) of Service Tax Rules only provides an optional composition scheme for payment of service tax which by itself does not create a charge of service tax. As regards the amendments carried out by Finance Act 2015, it was held to be made to overcome the decisions of The Court in the Future Gaming Case without removing the cause of invalidity of the Tax on buying & selling of lottery tickets. On the question of Reverse charge introduced on selling or marketing agents of lottery tickets, vide N No. 7/2015 dated 1.3.2015, is was held to be clearly unsustainable and liable to be struck down.

In Excise, The CBEC has come out with a clarification w.r.t. Notification No. 12/2012-Central Excise, dated 17.03.2012, vide **Circular No. 1008/15/2015-CX dated 20th October 2015.** It has clarified that Tower, Nacelle, Rotor and Wind turbine controller, nacelle controller and control cables are parts and components of **wind operated electricity generators (WOEG)** eligible for exemption under serial no. 332 of Notification No. 12/2012-Central Excise, dated 17.03.2012. Further if there are any Issues relating to exemption of any other parts and components of WOEG, the matter may be referred to Board through the Chief Commissioner concerned.

Just to reiterate that we remain available over a telecon or e-mail.

Truly Yours

Timir Baran Chatterjee

M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan

FCA, CIDT (ICAI), B. Com

INDEX GUIDE

COMPLIANCES CALENDAR

DUE DATE	COMPLIANCES FROM 18TH OCTOBER, 2015 TO 24TH OCTOBER, 2015	STATUTE
31st Oct'15	Deposit of Professional Tax	Maharashtra VAT Act
25th Oct'15	Deposit of Entry Tax	Maharashtra VAT Act (For registered dealers)
30th Oct'15		Maharashtra VAT Act (For unregistered dealers) Goa VAT Act Madhya Pradesh VAT Act Chattisgarh VAT Act
28th Oct'15	Return of WCT (Quarterly)	Delhi VAT Act
30th Oct'15		Chattisgarh VAT Act Gujarat VAT Act
31st Oct'15		Haryana VAT Act Jammu and Kashmir VAT Act
31st Oct'15	Return of WCT (Monthly)	Bihar VAT Act Punjab VAT Act Rajasthan VAT Act Tamil Nadu Act
25th Oct'15	Issuance of WCT certificate	West Bengal VAT Act Mizoram VAT Act
30th Oct'15		Rajasthan VAT Act (Quarterly)
31st Oct'15		Assam VAT Act Jammu and Kashmir VAT Act
31st Oct'15	Deposit of WCT	Jammu and Kashmir VAT Act
31st Oct'15	VAT Audit	Assam VAT Act Madhya Pradesh VAT Act
31st Oct'15	Annual Return	Madhya Pradesh VAT Act Uttar Pradesh VAT Act Meghalaya VAT Act
30th Oct'15	Deposit of VAT (Monthly)	Chattisgarh VAT Act Punjab VAT Act (other than cheque payment) Tripura VAT Act Himachal Pradesh VAT Act
	Deposit of VAT (Quarterly)	Goa VAT Act (Tax < 1 lac) Haryana VAT Act (Tax < 1 lac)
31st Oct'15	Deposit of VAT (Quarterly)	Mizoram VAT Act
25th Oct'15	Filing of VAT return (Monthly)	Delhi VAT Act Jharkhand VAT Act
30th Oct'15	Filing of VAT return (Monthly)	Punjab VAT Act (other than cheque payment) Himachal Pradesh VAT Act (Turnover>5 crore)
	Filing of VAT return (Quarterly)	Himachal Pradesh VAT Act (Turnover<5 crore) Chattisgarh VAT Act Madhya Pradesh VAT Act Goa Vat Act
31st Oct'15	Filing of VAT return (Quarterly)	Haryana VAT Act West Bengal VAT Act Sikkim VAT Act Jammu and Kashmir VAT Act

REPORT OF THE JOINT COMMITTEE ON BUSINESS PROCESS FOR GST on GST RETURN

GST is a self-assessed destination based taxation system. GST return is a connect between the taxpayer and tax administration.

Who needs to file Return in GST regime?

- Every registered person is required to file a return even if there is no business activity during the return period.
- UN agencies etc. will not be required to file regular return but only for the month during which they make purchases.
- Government entities / PSUs , etc. not dealing in GST supplies or persons exclusively dealing in exempted / Nil rated / non –GST goods or services would neither be required to obtain registration nor required to file returns under the GST law.

Return Filing Periodicity

There will be different frequency (detailed in the report) for filing of returns for different class of taxpayers, after payment of due tax, either prior to or at the time of filing return.

Monthly Return:

- Separate returns for the outward supplies, inward supplies and a consolidated return based on these two returns.
- Separate returns for the Input Service Distributors, non-resident taxpayers (foreigners) and Tax Deductors.
- The components of each of these return is being discussed in the Joint Committee report.
- Invoice level information would be captured in the return: Invoices pertaining to B2B transactions, B2C transaction etc.

Quarterly Return for compounding Taxpayers (GSTR-4)

The taxpayers will also have the option of compounding scheme wherein they would be required to pay taxes at fixed rate without any ITC facilities, but only after crossing the threshold exemption limit.

Where will the taxpayer file Return?

- A registered Tax Payer shall file Return at GST Common Portal either:
  i) by himself or,
  (ii) Through his authorized representative
- The filing may be done either
  i) directly, or,
  ii)by using Applications developed by accounting companies/IT companies which will interact with GST System using APIs or through Facilitation Center (FC).
- Registration of FC will be done by CBEC / respective State tax authorities and the registration data will be shared with GSTN to enable applicants/taxpayers to choose one from the available list of registered FCs.

Revision of Return

There would be no revision of returns. All revision will have to be corrected using credit/debit note and such credit / debit note would be reflected in the return for the month in which such adjustment is carried out.

Annual Return (GSTR-8):

All the Normal taxpayers would be required to submit Annual Return. This statement would provide a reconciliation of the returns with the audited financial statements of the taxpayer.

Processing of Return

After upload, the Portal will:

- Conduct validations and acknowledge the receipt of the return
- Forward the Return to tax authorities of Central and appropriate State Govt. through the established IT interface.
- The ITC claim will be confirmed to purchasing taxpayer in case of matched invoices.
- Communicate the macro-results of the matching to the taxpayers through SMS/e-Mail,
- Auto-populate the ITC reversals due to mismatching of invoices in the taxpayer's account in the return for the 2nd month
- Aggregate cross-credit utilization of IGST and SGST for each State and generate settlement instructions based on IGST model and as finalized by the Payments Committee.

SERVICE TAX

COURT DECISIONS

M/S. CREATIVE TRAVEL PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE & ST [CESTAT NEW DELHI]

BRIEF: If service tax returns have been filed u/s 70 and taxes have been paid then no Best judgement assessment can be made under Section 72.

OUR COMMENTS: In the above case, the appellant has filed their return regularly under section 70 of the Act. For the assessment of tax, he specifically asked the department to tell what information they require to issue the show cause notice, however, he was not informed by the department of the required information which hampered the determination of service tax liability.

In the absence of any document, the show cause notice is only on the basis of assumption and presumption i.e. SCN is deficient and not maintainable. **Therefore, provision of Section 72(b) is not attracted and no Best judgement assessment can be made.**

[Decided in favour of the assessee]

M/S FUTURE GAMING AND HOTEL SERVICES (PVT) LTD, M/S SUMMIT ONLINE TRADE SOLUTIONS PVT LTD, MR. NARESH MANGAL, DIRECTOR, MR. PREM KISHORE PARASHAR VERSUS UNION OF INDIA, THE COMMISSIONER OF SERVICE TAX, THE SUPERINTENDENT, CENTRAL EXCISE AND SERVICE TAX, THE STATE OF SIKKIM, SIKKIM STATE LOTTERIES [SIKKIM HIGH COURT]

BRIEF: Buying & selling Lottery Tickets is not rendering service to the State and hence not liable to service tax

OUR COMMENTS: In the above case, the appellants are engaged in selling the lottery tickets online organised by the Government of Sikkim. Service tax under reverse charge was imposed on them vide Notification No.7/2015-ST dated 01-03-2015, Annexure P4, in WP(C) No.39 of 2015. Also, Sub-Rule (7C) of Rule 6 was imposed.

The Hon'ble Sikkim High Court upheld its judgement in Future Gaming 2014 and Future Gaming 2015 - [2015 (10) TMI 1114 - SIKKIM HIGH COURT].

It held that Buying & selling Lottery Tickets is not rendering service to the State and hence does not fall within the meaning of 'service' under Clauses (31A) and (44) of Section 65B and outside the purview of Explanation 2 to the said Section.

Also, Rule 6(7C) of Service Tax Rules only provides an optional composition scheme for payment of service tax which by itself does not create a charge of service tax. As regards the amendments carried out by Finance Act 2015, it was held to be made to overcome the decisions of The Court in the Future Gaming Case without removing the cause of invalidity of the Tax on buying & selling of lottery tickets. On the question of Reverse charge introduced on selling or marketing agents of lottery tickets, vide N No. 7/2015 dated 1.3.2015, is was held to be clearly unsustainable and liable to be struck down.

[Decided in favour of the assessee]

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

CENTRAL EXCISE

NOTIFICATIONS & CIRCULARS

TOWER, NACELLE, ROTOR AND WIND TURBINE CONTROLLER, NACELLE CONTROLLER AND CONTROL CABLES ARE PARTS AND COMPONENTS OF WIND OPERATED ELECTRICITY GENERATORS (WOEG)

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India **vide Circular No. 1008/15/2015-CX dated 20th October 2015** has clarified that Tower, Nacelle, Rotor and Wind turbine controller, nacelle controller and control cables are parts and components of wind operated electricity generators (WOEG) eligible for exemption under **serial no. 332 of Notification No. 12/2012-Central Excise, dated 17.03.2012.** Further if there are any Issues relating to exemption of any other parts and components of WOEG, the matter may be referred to Board through the Chief Commissioner concerned.

Please refer the circular for details.

AMENDMENT IN NOTIFICATION NO. 12/2012

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 42/2015 dated 19th October, 2015** has amended **Notification No. 12/2012 Central Excise, dated the 17th March, 2012,** namely:

In the said notification,-

(A) in the opening paragraph, after the second proviso, the following proviso shall be inserted, namely:-

"Provided also that nothing contained in this notification shall apply to goods specified against serial number 113A of the said Table after the 31st day of March, 2016.";

(B) in the Table, after serial number 113 and the entries relating thereto, the following serial number and entries shall be inserted, namely:-

1	2	3	4	5
"113A	2905 or 3823 11 12	The following goods for use in the manufacture of alkyl esters of long chain fatty acids obtained from vegetable oils, commonly known as bio-diesels, namely:- (i) RBD Palm Stearin (ii) Methanol (iii) Sodium Methoxide	Nil	2".

COURT DECISIONS

2015 (39) STAR 24 (MAD.) V. SATHYAMOORTHY & CO. VS. CESTAT CHENNAI [HIGH COURT]

BRIEF: If Tribunal decides the stay application ex-parte before granting three adjournments on the ground that Appellants have adopted dilatory tactics by not appearing and thereby the law, the action of the Tribunal would be too harsh.

OUR COMMENTS: The Tribunal during the adjudication passed an ex-parte order confirming the demand on assessee. The assessee filed appeal and stay petition, then sought adjournment by filing request letter before the date of hearing on stay application. Tribunal granted an adjournment without even taking into account the said request letter on record. On occasion of second adjournment request letter by the assessee, Tribunal overlooked the letter and passed an ex-parte stay order. The assessee challenged the said ex-parte order before the High Court stating that tribunal is entitled to grant three adjournments to a particular party as per proviso to section 35C of the Central Excise Act.

The **Hon'ble High Court** held that Tribunal's action of deciding the stay petition ex-parte on second adjournment i.e. before granting three adjournments as per proviso to section 35C of the Central Excise Act and that too ignoring the assessee request for an adjournment terming non-appearance as abuse to process of law is too harsh. Accordingly, the case was remanded for reconsideration and the Court directed assessee not to seek adjournment on the next date. **[Decided in favour of the assessee]**

M/S. PUSHP ENTERPRISES VERSUS COMMISSIONER OF CENTRAL EXCISE JAIPUR I [CESTAT DELHI]

BRIEF: Suo moto credit can be taken if duty is paid twice as excess duty paid is not a duty but deposit.

OUR COMMENTS: In the above case, the assessee paid duty twice and then took suo moto Cenvat credit of the same which was denied. The assessee filed an appeal against the impugned order which demanded duty along with the interest and penalty.

The Hon'ble CESTAT held that although there is no provision to take suo moto credit under section 11B of the Act, it is only a procedural lapse and for that Cenvat credit cannot be denied. Hence, it held that the assessee has correctly taken suo moto credit of the duty paid twice. The impugned order was set aside.

[Decided in favour of the assessee]

CUSTOMS

NOTIFICATIONS & CIRCULARS

AMENDMENT IN NOTIFICATION NO. 27/2011-CUSTOMS DATED 1ST MARCH, 2011

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 50/2015-Customs dated 16th October, 2015** has amended **Notification No. 27/2011-Customs, dated the 1st March, 2011,** namely:

In the said notification, in the Table, after S.No.20A and the entries relating thereto, the following S.No. and the entries shall be inserted, namely:-

20B	260111, 260112	All goods, of National Mineral Development Corporation (NMDC) origin when exported by MMTC Limited, under the Long Term Agreement (hereinafter referred to as LTA), to Japan and South Korea subject to the condition that the exporter shall produce, prior to clearance of the said goods, before the Assistant Commissioner of Customs or Deputy Commissioner of Customs having jurisdiction, as the case may be, a certificate from the Director concerned of MMTC Limited to the effect that the said goods are of NMDC origin and are meant for export under the LTA to Japan and South Korea. Provided that nothing contained in this entry shall have effect on or after the first day of April, 2018.	10%

AMENDMENT IN NOTIFICATION NO. 12/2012-CUSTOMS DATED 17TH MARCH, 2012

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 51/2015-Customs dated 19th October, 2015** has amended **Notification No. 12/2012-Customs, dated the 17th March, 2012**, namely:-
In the said notification:

(a) in the Table, against S. No. 34, for the entry in column (4), the entry "25%" shall be substituted;

COURT DECISIONS

PRINCIPAL COMMISSIONER OF CUSTOMS VERSUS RISO INDIA PVT. LTD. [HIGH COURT DELHI]

BRIEF: The assessee is entitled for interest on SAD refund on the occasion of delay in processing the refund claim.

OUR COMMENTS: As per **Section 27A** of the Customs Act if any duty is ordered to be refunded u/s 27(2) and such refund is not made within three months from the date of receipt of the application u/s 27(1) **"there shall be paid to that applicant interest at such rate, not below 5% and not exceeding 30% per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty"**.

From **Section 3(8) of the CTA and Sections 27 and 27A** of the Act it becomes clear that refunds and interest on delayed refunds, would equally apply to refund of SAD **u/s 3** of the CTA. However, the Department denied interest to the Respondent by resorting the para 4.3 of the CBEC's Circular No.6/2008. Circular No.6/2008 to the extent it denies SAD refund, in terms of Notification No. 102/2007, interest on such refund in terms of Section 27A of the Act, is inconsistent with and ultra vires Section 27A of the Act.
Hence, The Hon'ble High Court held that the action of the Department was incorrect and no error was committed by CESTAT in ordering interest on the amount of SAD refunded, in terms of Section 27A of the Act.

[Decided in favour of the assessee]

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

INCOME TAX

NOTIFICATIONS & CIRCULARS

USE OF EMAIL BASED COMMUNICATION FOR PAPERLESS ASSESSMENT PROCEEDINGS

OUR COMMENTS: The CBDT (Dept. of Revenue), Ministry of Finance, Government of India vide **Circular No. F. No. 225/267/2015-ITA-II dated 19thOctober, 2015** has decided to initiate using **email on a pilot basis for corresponding with taxpayers at the time of scrutiny proceedings and getting responses from them.** This would eliminate visiting the Income-tax Offices by the taxpayers, particularly in smaller cases, involving limited issues and where taxpayer is able to provide details without his physical presence.

To start with, CBDT has decided to **launch a pilot project in this regard in five non-corporate charges at Delhi, Mumbai, Bengaluru, Ahmedabad & Chennai stations. Initially, 100 cases for e-hearing could be identified in each of these charges**. The cases should be those which have been selected for scrutiny on the basis of AIR/CIB information or non-matching with 26ASdata. Consent of taxpayers should also be obtained in the beginning. The officers of the Department, through their official e-mail IDs, can interact with the taxpayers at their email IDs as mentioned in the respective returns of income.

AMENDMENT IN INCOME TAX RULES, 1962 [RULES 10B & 10C]

OUR COMMENTS: The CBDT (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 83/2015 dated 19thOctober, 2015 has amended the Income Tax Rules, 1962 which may be termed as Income-tax (16th Amendment), Rules, 2015.**

The amendments have been made in **Rules 10B and 10C.**

Please refer the notification for details.

COURT DECISIONS

CIT VS. B. S. SHANTAKUMARI [KARNATAKA HIGH COURT]

BRIEF: 54F is a beneficial provision & must be interpreted liberally. It does not require that the construction of the new residential house has to be completed, and the house be habitable, within 3 years of the transfer of the old asset. It is sufficient if the funds are invested in the new house property within the time limit.

OUR COMMENTS: In the above case, the assessee sold a property on 06.10.2008 and purchased another residential plot on 13.10.2008 and. On 02.06.2010 she obtained approval of the building plan from the local authority and commenced the construction.
The assessee claimed deduction u/s 54F towards the benefit of Long Term capital gain. However, the assessing officer rejected the claim of the assessee as the construction stands incomplete as on 05.10.2011 i.e. within 3 years from the date of sale of first property.
To substantiate her investment and establish that the consideration received on transfer has been invested in a residential plot which is under construction, the assessee produced photographs of the residential building under construction.

The CIT(A) and Tribunal upheld the decision in **Commissioner of Income Tax Vs Sambandam Udaykumar reported in (2012) 81 CCH 0151** where it was held that 54F has to be construed liberally for achieving the purpose of its incorporation and allowed the appeal of assessee. The Department then appealed before High Court.

The Hon'ble High Court held that Section 54F of the Act is a beneficial provision which promotes for construction of residential house. It clearly indicates that it was to encourage investments in the acquisition of a residential plot and completion of construction of a residential house in the plot so acquired. It does not convey that such construction should be completed in all respects in three (3) years and/or make it habitable. The essence of it is to ensure that assessee invests the consideration received in construction of a residential house.
Hence, if the assessee is able to establish the same, the assessee would be entitled to get the benefit of Section 54F of the Act.
[**Decided against Revenue**]

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

ANDHRA PRADESH

INTER-STATE MOVEMENT OF GOODS - GOODS PURCHASED BY GOVERNMENT DEPARTMENTS AND CONSUMERS FOR THEIR OWN USE - INSISTENCE TO OBTAIN TRANSPORT DECLARATIONS AT BORDER CHECK POSTS/ICPS

OUR COMMENTS: The Commercial Tax Department, Government of Andhra Pradesh **vide Circular No. AI/1/45/2014 dated 14th October, 2015** has issued certain instructions regarding inter-state movement of goods purchased by Government departments and consumers for their own use.

Please refer the aforesaid circular for details.

JAMMU AND KASHMIR

FILING OF PRESCRIBED AUDIT REPORTS

OUR COMMENTS: The Department of Commercial Taxes, Government of Jammu and Kashmir vide **Notification No. 4 of 2015 dated 16th October, 2015** has notified that the registered dealers whose gross turnover in a year is Rs. 1.00 crore or more and who are required to fill the prescribed audit reports before the concerned Assessing Authority and Commissioner Commercial Taxes, shall do so for the accounting year 2014-15 by **31st October 2015**, before the concerned Assessing Authority with a true copy thereof to Commissioner Commercial Taxes.

KARNATAKA

EXTENSION OF REVISION OPTION UNDER E-UPASS MODULE

OUR COMMENTS: The Commercial Taxes Department, Government of Karnataka vide **Circular No. CCW/CR 44/2013-14 dated 19th October, 2015** has granted extension of revision option under e-UPaSS module for the tax periods from May 2014 – May 2015 enable for all Targeted dealers till 31/12/2015.

Please refer the aforesaid circular for details.

TELANGANA

WAIVER OF DEMAND RAISED OVER AND ABOVE 5% OF THE TAX ON DIESEL POWER GENERATORS

OUR COMMENTS: The Revenue (Commercial Taxes – II) Department, Government Telangana **vide Order G.O.RT. NO. 486 dated 17th October, 2015** has waived demand raised over and above 5% of the tax on Diesel Power Generators for the period 31.01.2013 to 16.08.2013, subject to the condition that the waiver shall be given only to the extent where the dealers could prove with evidence that they did not collect VAT at enhanced rate from the customer during the said period.

UTTAR PRADESH

AMENDMENT IN SCHEDULE OF UTTAR PRADESH TAX ON ENTRY OF GOODS INTO LOCAL AREAS ACT, 2007

OUR COMMENTS: The Finance Section, Government of Uttar Pradesh **vide No.- KA.NI.-2-1421/XI-9(1)/2008-U.P.Act-30-2007-Order-(143)-2015 dated 14th October, 2015** has amended the Schedule to Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 as follows:-

In the said Schedule, for entry at serial number 9, the following entry shall be substituted, namely :-

"9. Coal including coke in all its forms."

TRANSPORTATION OF THE EDIBLE OIL > NINE TONS, TO BE ACCOMPANIED BY FORM XXI,

OUR COMMENTS: The Finance Section, Government of Uttar Pradesh **vide Notification No.- KA.NI.-2-1422/XI-9(125)/09-U.P.Act-5-2008-Order-(145)-2015 dated 14th October, 2015** has directed that during the **transportation of the edible oil of the weight exceeding nine tons, transport memo in Form XXI** prescribed under Rule 40 of the Uttar Pradesh Value Added Tax Rules, 2008 shall be issued and accompanied.

AMENDMENT IN SCHEDULE IV OF UTTAR PRADESH VALUE ADDED TAX ACT, 2008

OUR COMMENTS: The Finance Section, Government of Uttar Pradesh **vide Notification No.- KA.NI.-2-1423/XI-9(1)/2008-U.P.Act-5-2008-Order-(142)-2015 dated 14th October, 2015** has amended schedule IV of Uttar Pradesh Value Added Tax Act, 2008as follows:

In the said Schedule-IV, for the entries at serial numbers 12, 13 and 14 the following entries respectively shall, columnwise be substituted, namely:-

Sl. No	Name and Description of goods	Point of Tax	Rate of Tax
1	2	3	4
12	Cigarette/Cigar	M Or I	40%
13	Pan masala without tobacco content	M Or I	40%
14	Khaini, Zarda, Surti, other manufactured tobacco and tobacco products excluding Bidi	M Or I	40%